

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)

v.)

MATTHEW DWINELLS)

CRIMINAL NO. 04-10010-PBS)

EX PARTE MOTION FOR ONE-DAY RELEASE
FOR PSYCHOLOGICAL TESTING IN PREPARATION FOR SENTENCING

The defendant Matthew Dwinells moves this Court to authorize his release from detention for one day so that he may travel to the office of a forensic psychologist for testing in preparation for his sentencing hearing in this case. The defendant is to be sentenced on February 14, 2006 for convictions for possession and receipt of child pornography and enticing minors to engage in sexual activity. He is being held at MCI - Walpole. Counsel believes that psychological testing is important to a thorough sentencing presentation in this case. However, one of the tests that the forensic psychologist retained by the defense, Dr. Carol Ball, wants to conduct cannot be administered inside a prison and can only be done in her office.¹ Therefore the defendant requests that he be furloughed for one day so that complete

¹ Dr. Carol Ball, Ph.D., is a co-founder of New England Forensic Associates, located at 22 Mill Street in Arlington. Counsel will be happy to provide the court with Dr. Ball's curriculum vitae should the court request it. If the defendant were to be released, this interview would take place at Dr. Ball's office in Arlington.

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testing can be performed. Specifically, the defendant requests that he be released on conditions and into the custody of an employee of the Federal Defender Office for an 8-hour period on January 5, 2006. The Federal Defender Office would transport the defendant from Walpole to the offices of Dr. Ball so that she could conduct her tests. At the conclusion of testing, the Federal Defender Office would transport the defendant from Dr. Ball's office back to MCI - Walpole.

The defendant Dwinells was on release in this case for many months before trial. He attended all of his trial proceedings even though he knew he faced the possibility of conviction and incarceration. Though the offenses of which he was convicted could be construed legally as crimes of violence, the offense conduct in this case did not involve any physical contact with any "victim." Counsel submits that the defendant poses no risk of violence or flight and that he could be safely released for a single business day for the purpose of this psychological testing.

Alternatively, counsel for the defendant moves this court to order the administrators at MCI - Walpole to allow Dr. Carol Ball to bring her laptop computer into the prison when she evaluates Mr. Dwinells. Dr. Ball cannot perform any psychological testing pertaining to possible pedophilia without materials which are in her computer. On October 24, 2005, when Dr. Ball first planned

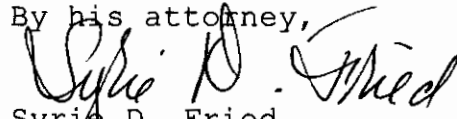
to see Mr. Dwinells, she was told by prison officials that she could not bring her computer into the prison. At that point, the interview with Mr. Dwinells was cancelled because Dr. Ball could not do any of the relevant sex-related psychological testing without her computer materials. The defendant maintains his request for a one-day release because Dr. Ball can do a more complete test of the defendant's pertinent makeup in her office. Should this court deny that request, however, the defendant still needs Dr. Ball to have access to her computer in order to get a relevant psychological evaluation for sentencing purposes in this case. Dr. Ball has made herself available to evaluate Mr. Dwinells on January 5, 2006.

CONCLUSION

For the reasons set out above, the defendant Matthew Dwinells asks for a one-day release from incarceration on January 5, 2006. In the alternative, the defendant requests that this court order administrators at MCI - Walpole to allow Dr. Carol Ball to bring her laptop computer into that institution for the purpose of doing psychological testing.

Respectfully submitted,

By his attorney,

A handwritten signature in cursive script, appearing to read "Syrie D. Fried".

Syrie D. Fried

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